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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,595	08/22/2003	Stanley W. Huth	14628/301681	9800
33357 7590 06/28/2007 ADVANCED MEDICAL OPTICS, INC. 1700 E. ST. ANDREW PLACE SANTA ANA, CA 92705			EXAMINER MARTIN, PAUL C	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 06/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,595

Applicant(s)

HUTH ET AL.

Examiner

Paul C. Martin

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 and 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claims 1, 2, 4-10 are pending in this application and were examined on their merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/04/07 has been entered.

The objection to Claim 4 due to minor informalities has been withdrawn due to the Applicant's amendments to the Claims filed 04/04/07.

The rejection of Claim 8 under 35 U.S.C. § 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention has been withdrawn due to the Applicant's amendments to the Claims filed 04/04/07.

Claim Rejections - 35 USC § 102

Claims 1, 4 and 6-8 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Kovacs-Hadady *et al.* (1998) for reasons for record set forth in the Action mailed 01/04/07.

Claim Rejections - 35 USC § 103

Claims 1, 2, 4, 6-8 and 10 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Kovacs-Hadady *et al.* (1998) in view of Park *et al.* (US 6,316,669 B1) for reasons for record set forth in the Action mailed 01/04/07.

Claims 1 and 4-10 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Kovacs-Hadady *et al.* (1998) in view of Horonick *et al.* (US 3,678,151) for reasons for record set forth in the Action mailed 01/04/07.

Response to Arguments

Applicant's arguments filed 04/04/07 have been fully considered but they are not persuasive.

The Applicant argues that the amendment to Claim 1 wherein the detector is described as capable of detecting a change in the spectrum of a solution comprising a complex formed by a probe molecule and an agent, wherein the solution has a pH greater than 5 and that this pH optimum is distinct from that of the Kovacs-Hadady *et al.* reference which does not teach or suggest the present invention (Remarks; Pg. 4, Lines 12-23 and Pg. 5, Lines 1-7) and that the combination of references in view of Kovacs-Hadady *et al.* does not then teach all the limitations of the claimed invention (Remarks, Pg. 5, Lines 8-18).

This is not found to be persuasive for the following, the newly added language to Claim 1 is of a functional nature and does not materially change the system as claimed, which comprises: a probe molecule, an agent, a source of light radiation and a detector. The new language does not constitute a new limitation, merely that the detector itself *be capable* of detecting a change in the spectrum of a solution comprising a complex formed by a probe molecule and an agent, wherein the solution has a pH greater than 5.

Barring any evidence to the contrary, there is no reason to believe that the Hewlett-Packard 8453 diode-array spectrophotometer disclosed by Kovacs-Hadady *et al.* would not be able to detect a change in the spectrum of a solution comprising a complex formed by a probe molecule and an agent, wherein the solution has a pH greater than 5. Further, Kovacs-Hadady *et al.* specifically teaches a method wherein the change in the spectrum of a solution comprising a complex formed by Eosin-Y and Benzalkonium Chloride, wherein the solution has a pH of 9.62 (Fig. 1).

Conclusion

No Claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul C. Martin whose telephone number is 571-272-3348. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Martin
Examiner
Art Unit 1657

6/11/07



PATRICIA LEITH
PRIMARY EXAMINER